

## Chapter ERC 32

### MEDIATION – ARBITRATION IN DISPUTES RELATING TO NEGOTIATIONS COMMENCED ON OR AFTER MAY 7, 1986

ERC 32.01	Scope.	ERC 32.12	Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal or proposals relate to mandatory subjects of bargaining.
ERC 32.02	Policy.	ERC 32.13	Certification of results of investigation or hearing, or certification based on stipulation.
ERC 32.03	Notice of commencement of negotiations.	ERC 32.14	Order appointing arbitrator.
ERC 32.04	Voluntary impasse resolution procedure.	ERC 32.15	Public hearing and arbitration hearing.
ERC 32.05	Petition to initiate arbitration.	ERC 32.16	Enforcement of award.
ERC 32.06	Stipulation to initiate arbitration.	ERC 32.17	Modification of award.
ERC 32.07	Withdrawal of petition or stipulation.	ERC 32.18	Procedure following court injunction of a strike posing an imminent threat to public health or safety.
ERC 32.08	Pre-investigation procedure.		
ERC 32.09	Informal investigation or formal hearing.		
ERC 32.10	Final offers.		
ERC 32.11	Procedure for raising objection that proposals relate to non-mandatory subjects of bargaining.		

**Note:** Chapter ERB 32 was created as an emergency rule effective May 14, 1986. Chapter ERB 32 was renumbered chapter ERC 32 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468.

**ERC 32.01 Scope.** This chapter governs the procedure relating to interest arbitration pursuant to s. 111.70 (4) (cm), Stats. for negotiations commencing on or after May 7, 1986 affecting municipal employees other than law enforcement and fire fighting personnel. For the purposes of this chapter, the commencement of negotiations shall be whenever either party receives a request or notice from the other to reopen negotiations under a binding agreement or to otherwise commence negotiations if no agreement exists. Sections 4 through 10, 10m and 13 of 1985 Wis. Act 318 affect the impasse resolution procedures set forth in s. 111.70 (4) (cm) 6., Stats., and therefore those sections of that Act shall only apply to negotiations commencing on or after May 7, 1986.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.02 Policy.** The policy of the state and of this chapter is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If the procedures fail, the parties should have available to them a fair, speedy, effective and above all, peaceful procedure for settlement including, where a deadlock exists after negotiations, and after mediation by the commission, a procedure for the resolution thereof by arbitration. Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission deems necessary to meet its statutory responsibilities to report on the operation of the arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.03 Notice of commencement of negotiations. (1) WHO MUST FILE.** Whenever a labor organization representing municipal employees or a municipal employer requests to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no agreement exists, the party requesting negotiations shall immediately notify the commission in writing of the request and a copy thereof shall be served on the other party. Should the requesting party fail to file the notice, the other party may notify the commission.

**Note:** The commission's address is 18 South Thornton Avenue, P.O. Box 7870, Madison, Wisconsin 53703-7870.

**(2) CONTENTS.** The notice shall be on a form provided by the commission, or on a facsimile and shall contain the following:

(a) The date on which the party filing the notice notified the other party as to the intent to either reopen negotiations under a

binding collective bargaining agreement or to commence negotiations, where no agreement exists.

(b) The name of the municipal employer, as well as the name, title, address and phone number of its principal representative.

(c) The name of the labor organization, or other representative involved, as well as the name, title, address and phone number of its principal representative.

(d) A general description of the collective bargaining unit involved and the approximate number of employees included therein.

(e) The effective date and termination date of the existing collective bargaining agreement, if any, as well as the date reflected in the agreement on which notice to open negotiations must be served on the other party.

(f) A statement indicating whether the parties have agreed to a voluntary impasse resolution procedure.

(g) The identity of the party filing the notice, as well as the signature and title of the individual signing the notice, and the date upon which the notice was executed.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.04 Voluntary impasse resolution procedure. (1) WHO MUST FILE.** Whenever a municipal employer and a labor organization, or other representative involved, agree in writing to a dispute settlement procedure for the resolution of an impasse in their negotiations leading to a collective bargaining agreement, as provided in s. 111.70 (4) (cm) 5., Stats., a copy shall be filed by the parties with the commission.

**(2) TIME FOR FILING.** If such an agreement is executed prior to the notice of commencement of negotiations required to be filed in s. ERC 32.03, such an agreement must be filed at the time the notice of commencement of negotiations is filed with the commission. If such an agreement is executed after the filing of the notice of commencement of negotiations, it must be filed immediately after the execution.

**(3) SCOPE.** The provisions of s. 111.70 (4) (cm) 8m., Stats., may not be superseded by a voluntary impasse resolution procedure. In addition, if the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under s. 111.70 (4) (cm) 7., Stats.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

**ERC 32.05 Petition to initiate arbitration. (1) WHO MAY FILE.** A petition to initiate arbitration may be filed by a municipal employer, a collective bargaining representative of municipal employees, or by anyone authorized to act on their behalf.

(2) **FORM, NUMBER OF COPIES, AND FILING.** The petition shall be prepared on a form provided by the commission, or a facsimile thereof. The original and 2 copies shall be filed with the commission at its office, and a copy shall, at the same time, be served on the other party involved by registered or certified mail.

(3) **CONTENTS.** The petition shall include:

(a) The name and address of the municipal employer involved and the name and telephone number of its principal representative.

(c) A general description of the collective bargaining unit involved and the approximate number of employees included therein.

(d) A statement that the parties are deadlocked after a reasonable period of negotiation and after mediation by the commission, if any, and other settlement procedures, if any, established by the parties have been exhausted, with respect to a dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement.

(e) The date on which notice was served to open negotiations and the identity of the party serving same.

(f) The date or dates on which proposals were exchanged in open meeting.

(g) The number of negotiation meetings prior to mediation, if any, by the commission.

(h) The dates on which mediation, if any, was conducted and the identity of the commission mediator.

(i) The termination date of the existing collective bargaining agreement, if any.

(j) The identity of the party filing the petition, as well as the signature and title of the individual signing the petition, and the date upon which the petition was executed.

(k) The petitioning party's preliminary final offer containing its latest proposals on all issues in dispute.

(4) **RESPONSIVE PRELIMINARY FINAL OFFER.** Within 14 calendar days of the date the commission receives the petitioning party's preliminary final offer, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party and the commission.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

### **ERC 32.06 Stipulation to initiate arbitration.**

(1) **WHO MAY FILE.** A stipulation to initiate arbitration may be filed by a municipal employer and a collective bargaining representative of municipal employees or by anyone authorized to act on their behalf.

(2) **FORM, NUMBER OF COPIES AND FILING.** The stipulation shall be prepared on a form provided by the commission, or on a facsimile. The original and 2 copies shall be filed with the commission.

(3) **CONTENTS.** The contents of the stipulation shall contain the same information which is required to be set forth in a petition to initiate arbitration, except that the stipulation shall be signed by representatives of both parties and shall contain both parties' preliminary final offers on all issues in dispute which the parties shall exchange in writing before or at the time they submit the stipulation.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

### **ERC 32.07 Withdrawal of petition or stipulation.**

Any petition may be withdrawn by the petitioner, and a stipulation may be withdrawn by the parties executing same, with the consent of the commission under such conditions as the commission may impose to effectuate the policies of s. 111.70 (4) (cm), Stats.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.08 Pre-investigation procedure.** After a petition or stipulation has been filed, the commission shall appoint an

investigator from its staff, who shall set a date, time and place for the conduct of an informal investigation or for the conduct of a formal hearing with respect to the petition or stipulation as the case may be. If during any mediation by a commissioner mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing described in s. ERC 32.09. A waiver should be written and can accompany a petition or stipulation requesting arbitration or be filed thereafter.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

### **ERC 32.09 Informal investigation or formal hearing.**

(1) **PURPOSE.** It shall be the duty of the commission or its agent conducting the informal investigation or formal hearing, to induce facts pertinent to a determination as to whether the parties are deadlocked in their negotiations. If it is determined that the parties are deadlocked, the commission or its agents shall obtain the single final offers of the parties containing their final proposals on issues in dispute, and to further obtain a stipulation executed by the parties on all matters agreed upon to be included in the new or amended collective bargaining agreement. During the informal investigation or formal hearing the commission or its agent may engage in an effort to mediate the dispute.

(2) **INFORMAL INVESTIGATION PROCEDURE.** The commission or its agent shall set a date, time and place for the conduct of the informal investigation and shall notify the parties thereof in writing. The informal investigation may be adjourned or continued as the commission or its agent deems necessary. During said investigation the commission or its agent may meet jointly or separately with the parties for the purposes described in sub. (1). Prior to the close of the investigation the investigator shall obtain in writing the final offers of the parties on the issues in dispute and a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. The investigator shall also obtain each party's written position regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the commission. At the same time the parties shall exchange copies of their final offers, and shall retain copies of the stipulation of agreed upon matters. If at time of the exchange of final offers or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal or proposals relating to non-mandatory subjects of bargaining, the commission agent shall serve a notice in writing upon the parties indicating the investigation is closed. The commission or its agent may not close the investigation until the commission or its agent is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer and that both final offers conform to the requirements of s. ERC 32.10 (2). Following the close of the investigation the commission agent shall report the findings to the commission, either orally or in writing, as the commission may direct, and at the same time transmit to the commission the final offers and the stipulation received from the parties. The commission agent shall also notify the commission as to whether both parties have agreed in writing to authorize the commission to include one or more nonresidents of Wisconsin on the arbitration panel to be submitted in the matter.

(3) **FORMAL HEARING PRACTICE AND PROCEDURE.** The commission or its agent shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The commission or its agent may adjourn or continue the hearing. Hearing practice and procedure shall be as set forth in ch. ERC 10. Prior to the close of the hearing the commission or its agent shall obtain and exchange the final offers, stipulation of agreed upon

items and written positions concerning nonresident arbitrators in the manner set forth in sub. (2).

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction in (2) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

**ERC 32.10 Final offers. (1) CONTENTS GENERALLY.** Final offers shall contain proposals relating only to mandatory subjects of bargaining, except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection by the other party to the inclusion of the proposals in such a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 32.12 or injunction proceedings referred to in s. ERC 32.18 (1).

**(2) CONTENTS REGARDING TERM OF AGREEMENT AND REOPENER PROVISIONS.** Except for the initial collective bargaining agreement between the parties affecting the employees involved, where the parties have not agreed upon the term of the agreement as a part of the stipulation of agreed upon items, final offers shall provide for no other term of agreement than 2 years. Final offers may not contain a provision for reopening of negotiations during the term of an existing agreement for any purpose other than negotiation of a successor agreement or with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation. Any other provisions for reopening of negotiations during the term of an existing agreement must be agreed upon by the parties as a part of the stipulation of agreed upon items.

**(3) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION.** Following the close of the investigation, a party may modify its final offer only with the consent of the other party. Any modification shall be in writing, supported by a written statement signed by the representative of the other party.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; reprinted to restore missing material in (2), Register, May, 1987, No. 377; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

**ERC 32.11 Procedure for raising objection that proposals relate to non-mandatory subjects of bargaining.**

**(1) TIME FOR RAISING OBJECTION.** Any objection that a proposal relates to a non-mandatory subject of bargaining may be raised at any time after the commencement of negotiations, but prior to the close of the informal investigation or formal hearing.

**(a) During negotiations, mediation or investigation.** Should either party, during negotiations or during commission mediation or investigation raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, either party may commence a declaratory ruling before the commission pursuant to s. 111.70 (4) (b), Stats., and ch. ERC 18.

**(b) At time of call for final offers.** Should either party, at such time as the commission or its agent calls for and obtains and exchanges the proposed final offers of the parties, or within a reasonable time thereafter as determined by the commission or its investigator, raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, the offers shall not be deemed to be final offers. The commission or its agent shall not close investigation or hearing but shall direct the objecting party to reduce the objection to writing, identifying the proposal or proposals claimed to involve a non-mandatory subject of bargaining and the basis for the claim. Such objection shall be signed and dated by a duly authorized representative of the objecting party, and copies of the objection shall, on the same date, be served on the other party, as well as the commission or its agent conducting the investigation or hearing, in the manner and within a reasonable time as determined by the commission or its investigator, with regard to permissive subjects of bargaining during negotiations and prior to the close of the investigation does not

constitute a waiver of the right to file an objection as set forth in sub. (1) (b).

**(2) EFFECT OF BARGAINING ON PERMISSIVE SUBJECTS.** Bargaining with regard to permissive subjects of bargaining during negotiations and prior to the close of the investigation does not constitute a waiver of the right to file an objection as set forth in sub. (1) (b).

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

**ERC 32.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal or proposals relate to mandatory subjects of bargaining.**

**(1) WHO MAY FILE.** Either party may file a petition, or both of the parties may file a stipulation, to initiate such a declaratory ruling proceeding before the commission.

**(2) WHERE TO FILE.** A petition or stipulation shall be filed with the commission, and if a petition is filed a copy shall be served on the other party at the same time.

**(3) WHEN TO FILE.** A petition or stipulation may be filed with the commission during negotiations, mediation or investigation. If a petition or stipulation is filed after the investigator calls for final offers, the petition or stipulation for declaratory ruling must be filed within 10 days following the service on the commission or its investigator of the written objection that a proposal or proposals relate to non-mandatory subjects of bargaining. Failure to file such a petition or stipulation within this time period shall constitute a waiver of the objection and the proposal or proposals involved therein shall be treated as mandatory subjects of bargaining.

**(4) PROCEDURE FOLLOWING ISSUANCE OF DECLARATORY RULING.** Following the issuance and service of the declaratory ruling, the commission or its investigator shall conduct further investigation or hearing for the purpose of obtaining the final offer of each party before closing the investigation. Neither final offer may include any proposal which the commission has found to be a non-mandatory subject of bargaining unless consented to in writing by the other party. Should the commission's decision be appealed the parties may agree to the conditional inclusion of such proposals in their final offers.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.13 Certification of results of investigation or hearing, or certification based on stipulation.**

**(1) WHEN ISSUED.** After consideration of either the report of the commission or its agent following the conduct of the investigation or formal hearing, or after the consideration of the parties' stipulation to waive investigation or formal hearing, the commission shall issue a certification determining whether there has been substantial compliance with s. 111.70 (4) (cm), Stats., and whether the parties are deadlocked. If the commission determines that there has not been substantial compliance with the requirements of s. 111.70 (4) (cm), Stats., it may order compliance if it would tend to result in a settlement.

**(2) CONTENTS.** Said certification shall contain findings of fact and conclusions material in the matter, as well as an order either initiating arbitration or dismissing the petition or stipulation, consistent with the purposes and policies set forth in s. 111.70 (4) (cm), Stats.

**(3) SUBMISSION OF PANEL.** Should the certification require that arbitration be initiated and the parties have not previously agreed to their own procedures for resolving the deadlock, the parties shall be directed to select an arbitrator within 10 days following the issuance of the certification from a panel of 7 arbitrators designated by the commission. Unless the parties have mutually agreed otherwise in writing, the panel shall not include individuals who are nonresidents of Wisconsin at the time the panel is submitted. In the absence of an agreement to another method of selection, the parties shall select the arbitrator by alternately striking names from the panel until a single name remains, who shall be the arbit-

trator. The order of proceeding in the selection process shall be determined by lot.

(4) **TRIPARTITE PANEL.** In lieu of the procedures set forth in sub. (3), both parties may request the commission to appoint a tripartite arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as chairperson. Unless the parties have mutually agreed otherwise in writing, the commission's designee shall be a resident of Wisconsin at the time of designation.

(5) **RANDOM APPOINTMENT.** In lieu of the procedures set forth in sub. (3), at the request of both parties the commission shall submit a list of 7 arbitrators from which each party will strike one name by the method specified in sub. (3). Unless the parties have mutually agreed otherwise in writing, the panel may not include individuals who are nonresidents of Wisconsin at the time the names of the panel members are submitted. Upon notification of the names stricken by each party, the commission shall select the arbitrator by lot from the 5 remaining names.

(6) **SERVICE OF CERTIFICATION AND PANEL.** Copies of the certification and the names of the panel members shall be served on the parties by certified or registered mail.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.14 Order appointing arbitrator.** (1) **NOTIFICATION OF SELECTION.** The parties, or either of them, shall notify the commission in writing as to the identity of the arbitrator selected by them immediately upon such selection. In this chapter "arbitrator" refers to a single arbitrator, a tripartite arbitration panel, or the impartial chairperson of a tripartite arbitration panel.

(2) **ORDER.** Upon receipt of the notification of the identity of the arbitrator selected or after completing designation or random selection of the arbitrator, the commission shall serve the parties with copies of its order of the appointment of the arbitrator. The commission shall at the same time submit a copy of the order to the selected arbitrator, as well as copies of the final offers of the parties. A notice to the public shall be appended to the order setting forth the nature of the order, the identity of the arbitrator and the procedure for obtaining copies of final offers and requesting a public hearing.

(3) **PUBLIC NOTICE.** Immediately upon receipt of the notice, the municipal employer involved shall cause a copy or copies to be posted where notices to the public are usually posted. In addition, the municipal employer shall inform the public of the content of the notice in the same manner that it informs the public of public meetings.

(4) **COPIES OF FINAL OFFERS.** The single final offers submitted to the appointed arbitrator shall be considered public documents and copies may be obtained from the commission, by any person upon written request, following the issuance of the order making such appointment, at the cost of reproduction and postage.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

### **ERC 32.15 Public hearing and arbitration hearing.**

(1) **TIME AND PLACE.** The arbitrator shall within 10 days of his or her formal appointment, establish the date, time and place for the arbitration hearing and shall issue and serve upon the parties a notice of hearing specifying the date, time and a place within the jurisdiction of the municipal employer involved where the hearing will be held. The hearing date shall not fall within the 10-day period. The hearing shall be open to the public.

(2) **WITHDRAWAL OF FINAL OFFERS.** The arbitrator shall also notify the parties of the date, predating the arbitration hearing date, by which a party must provide written notice to the arbitrator, the other party, and the commission that said party is thereby withdrawing its final offer. If both parties timely withdraw their final offers and mutually agreed upon modifications thereof, and the labor organization gives 10 days written notice to the municipal employer and the commission of its intent to strike, the commission shall endeavor to mediate the dispute.

(3) **PETITION FOR PUBLIC HEARING.** Any 5 citizens of the jurisdiction served by the municipal employer involved may, within 10 days after the appointment of the arbitrator, file a request in writing with the commission that a public hearing be convened prior to the arbitration hearing. A request shall be deemed a petition within the meaning of s. 111.70 (4) (cm) 6. b., Stats. The signers shall set forth their addresses and a statement that they are citizens of the jurisdiction served by the municipal employer involved. Any signer of such request shall serve copies thereof on the parties involved, as well as on the appointment arbitrator.

(4) **NOTICE OF PUBLIC HEARING.** Upon receipt of a citizen petition and after the arbitration hearing has been scheduled by the arbitrator, the municipal employer involved shall notify the public, in the manner set forth in s. ERC 32.14 (3), that a public hearing will be convened prior to the arbitration hearing. The notice shall identify the parties involved and shall set forth the date, time and place of the hearing. Copies of the notice shall be served by the municipal employer on the collective bargaining representative involved, on the arbitrator, and the commission.

(5) **PURPOSE OF PUBLIC HEARING.** Said public hearing shall be for the purpose of providing the opportunity for both parties to explain or present supporting arguments for their positions and to provide an opportunity to members of the public to offer their comments and suggestions.

(6) **PROCEDURE IN PUBLIC HEARING.** The arbitrator shall take reasonable steps to ensure that the public hearing is orderly and that it does not result in undue delay or cost to the parties. The arbitrator may require that members of the public, who desire to offer comments and suggestions, to register, may determine the sequence in which the parties and the members of the public shall be heard, and may determine when the hearing shall be terminated.

(7) **TRANSCRIPTS.** Either party or any person participating in the public hearing may make their own arrangements to have a transcript of the public hearing prepared at their own expense. Arbitration proceedings shall not be delayed for the purpose of awaiting the preparation of a transcript. If the public hearing is recorded or transcribed, the arbitrator shall be furnished a copy upon request.

(8) **SCOPE OF ARBITRATION HEARING.** The arbitration hearing shall concern pertinent matters necessary for the arbitrator to issue a compulsory and final and binding arbitration award by selecting the final offer and mutually agreed upon modifications thereof, of either party. In making such selection the arbitrator shall give weight to the factors set forth in s. 111.70 (4) (cm) 7., Stats., and the parties shall be prepared to present evidence and argument relative to the factors involved.

(9) **ARBITRATION HEARING PROCEDURE.** Hearings shall be within the control of the arbitrator and shall be as expeditious as the nature of the dispute will allow. In conducting same, the arbitrator has the power to:

- (a) Administer oaths and affirmation;
- (b) Issue subpoenas in the name of the commission (arbitrators may obtain appropriate subpoena forms from the commission);
- (c) Rule on offers of proof and receive relevant evidence;
- (d) Regulate the course of the arbitration hearing; and
- (e) Dispose of procedural requests and similar matters.

(10) **WAIVER OF HEARING, TRANSCRIPT AND BRIEF.** With the consent of the arbitrator, the parties may agree to waive the convening of a formal hearing, the preparation of a transcript of the arbitration hearing and/or the filing of briefs.

(11) **MEDIATION.** Nothing in this chapter or s. 111.70 (4) (cm), Stats., precludes the parties from mutually agreeing during arbitration to have the arbitrator or the commission or both attempt to mediate the dispute at any time prior to the issuance of an award, but no party shall be obligated to participate in mediation or to continue to participate in mediation.



**(12) ISSUANCE OF AWARD.** The arbitrator shall issue the arbitration award in writing as expeditiously as possible following the receipt of final arguments or briefs, if any. If the award is issued by a tripartite panel, each member thereof must execute the award, either affirming or dissenting. Upon the execution and signing of the award, copies thereof, as well as a statement reflecting fees and expenses, if any, shall be submitted to the parties and to the commission. Arbitrators who repeatedly or egregiously fail to issue their decision within 60 days following receipt of final arguments or briefs, if any, shall be subject to removal from the commission's list of qualified arbitrators following notice and an opportunity to be heard. Reinstatement to the list may be granted where the commission is satisfied that the individual will be able to consistently issue timely awards under s. 111.70 (4) (cm) 6. d., Stats.

**(13) COSTS.** The fees and expenses of the arbitrator including, but not limited to, the conduct of the public hearing, arbitration hearings, the rental of hearing rooms, and the preparation of the award, shall be borne by the parties on an equal basis. The parties may obtain information with regard to the per diem and other charges of arbitrators upon request from the commission. Costs involved with respect to subpoenas and witness fees shall be borne by the party at whose request subpoenas are issued and at whose request witnesses appear. Costs with respect to fees of and expenses incurred by the reporter, if any, shall also be borne equally by the parties where the arbitrator desires a transcript, or where both parties have agreed that the hearing be transcribed. Where only one party desires a transcript, that party is solely responsible for the fees and expenses incurred by the reporter and shall provide a copy of the transcript to the arbitrator. The fees and expenses of arbitrators selected by one of the parties to serve on a tripartite panel shall be paid by the party making the selection.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

**ERC 32.16 Enforcement of award. (1) PROCEDURE.** If either party refuses or otherwise fails to implement an interest arbitration award lawfully made by failing to incorporate it into a written collective bargaining agreement, the other party may file a complaint of prohibited practices as provided in ch. ERC 12. Such proceeding shall be deemed to be a class 2 proceeding within the meaning of s. 227.01 (3) (b), Stats., and shall be governed by the provisions of ss. 111.07 and 111.70 (4) (a), Stats. In determining whether an interest arbitration award was lawfully made, the commission shall find that said award was not lawfully made under the following circumstances:

- (a) Where the interest arbitration award was procured by corruption, fraud or undue means;
- (b) Where there was evident partiality on the part of the neutral arbitrator or corruption on the part of an arbitrator;
- (c) Where the arbitrator was guilty of misconduct in refusing to conduct an arbitration hearing upon request or refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear supporting arguments or evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final and definite interest arbitration award was not made.

**(2) CIVIL LIABILITY.** Any party refusing to include an arbitration award or decision under s. 111.70 (4) (cm), Stats., in a written collective bargaining agreement or failing to implement the award or decision, unless good cause is shown, shall be liable for attorney fees, interest on delayed monetary benefits, and other costs incurred in any action by the nonoffending party to enforce the award or decision.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction in (1) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.

**ERC 32.17 Modification of award.** If, in a proceeding for enforcement, it appears that an interest arbitration award is lawfully made, but that the award requires modification or correcting, the commission shall issue an order modifying or correcting the award. An interest arbitration award may be modified or corrected where:

- (1) A court enters an order, which is not subject to further appeal, reversing a commission ruling that a particular proposal contained in said award is a mandatory subject of bargaining;
- (2) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in said award;
- (3) Where the arbitrator has awarded upon a matter not submitted, unless it is a matter not affecting the merits of the award upon the matters submitted;
- (4) Where the award is imperfect in matter of form not affecting the merits of the controversy.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86.

**ERC 32.18 Procedure following court injunction of a strike posing an imminent threat to public health or safety. (1) NEW FINAL OFFERS.** Following the issuance of a court order enjoining a strike which poses an imminent threat to the public health and safety, and pursuant to the order of said court, the parties shall submit, in writing, new final offers on all disputed issues, to the commission within the time limit set therefor by the court.

**(2) MEDIATION.** Within the time limit set by the court for the submission of new final offers, the parties may mutually, in writing, request that the commission proffer its mediation services to the parties in an attempt to resolve their deadlock. Upon receipt of a request the commission or its agent shall arrange a mutually satisfactory date and place for such mediation.

**(3) ARBITRATION.** If, after such mediation, within the time limits set by the court, the parties remain in deadlock, the commission shall transmit the new final offers to the arbitrator, or to a successor designated by the commission. The arbitrator or a successor shall immediately commence to arbitrate the dispute. The arbitration proceeding shall be in accordance with s. ERC 32.15.

**History:** Cr. Register, October, 1986, No. 370, eff. 11-1-86; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1994, No. 468.